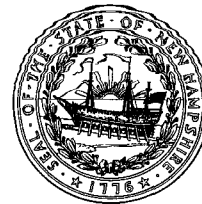


The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

**LETTER OF DEFICIENCY
WET 06-102**

September 14, 2006

Steven C. & Jill E. DiGiovanni
699 Kings Highway
Middleton, NH 03887

RE: DES Wetlands File # 2004-3011, Middleton, NH

Dear Mr. & Mrs. DiGiovanni.:

On January 18, 2005 DES sent you correspondence notifying you of a possible wetlands violation on your property more specifically referenced on Town of Middleton Tax Map 19 as Lot 9-1 (the "Property"). Following this DES received correspondence from your attorney, Albert E. Souther, indicating that the wetlands on your property had been flagged by David Allain, CWS an that Easterly Surveying had completed a plan. To date a copy of this plan has not been forwarded to DES.

DES conducted inspections of your property on August 18, 2005 & July 21, 2006. The purpose of the inspections was to determine compliance with RSA 482-A and NH Code of Admin. Rules Env-Wt 100-800. During the inspections the following observations were documented:

1. Approximately 3000 sq ft of jurisdictional wetland was filled for a driveway crossing.
2. A 30' long culvert was installed in an intermittent stream channel underneath the crossing.
3. Fill for lot development was unstable and eroding down into the wetland and stream channel and no erosion controls were present.
4. Sedimentation was present through approximately 80' of the intermittent stream channel.

DES records indicate that a Wetlands Permit was not obtained for the above impacts. To bring the issues at hand to a timely resolution, you are requested to take the following actions:

1. Immediately install erosion controls and implement stabilization methods to prevent further impacts to jurisdictional areas (ex. Silt fence, seed, and mulch).
2. Within 7 days of receiving this LOD, submit photographs mounted on 8.5" x 11" white paper documenting the completion of #1.

3. Within 7 days of receiving this Letter of Deficiency (LOD), please retain a certified wetland scientist (CWS) to submit a Standard Dredge and Fill application and restoration plan as outlined in #4 below, to oversee the implementation of the restoration plan, and to submit monitoring reports to DES. Also within 7 days, have the CWS contact Stacey Herbold, Compliance Specialist, at (603) 271-4062 to confirm he/she has been retained.
4. Within 30 days of receipt of this LOD, submit an "after-the-fact" application (Standard Dredge and Fill application) to retain permissible impacts, along with a restoration plan to restore unpermissible impacts, to DES for review and approval. Have the restoration plan prepared by a certified wetland scientist, and include provisions for the restoration of all unpermissible wetland and stream impacts on the Property. Submit the following with the restoration plan:
 - a. A plan with dimensions, drawn to scale, showing:
 1. Existing conditions, with wetland boundaries; and
 2. Proposed conditions after reestablishing the jurisdictional areas;
 - b. A detailed description of the proposed means of temporary and permanent erosion control (silt fence, hay bales, etc) and stabilization of the restoration area;
 - c. A detailed description of the proposed planting plan for the stabilization and revegetation of the restoration area and control of invasive species such as purple loosestrife (*Lythrum salicaria*) and common reed (*Phragmites australis*);
 - d. A description of the proposed construction sequence and methods for accomplishing restoration and anticipated restoration compliance date.
 - e. A description of the method of documenting at least 75% survival of all vegetation planted during the restoration project. This should include at a minimum monitoring progress reports for two successive growing seasons following completion of the restoration project.
5. Implement the restoration plan only after receiving written approval and as conditioned by DES.

RSA 482-A, the New Hampshire Wetlands law, was enacted to protect and preserve wetlands and surface waters from unregulated despoliation. Prior to dredging, filling, or construction in and adjacent to wetlands or surface waters, an individual is required to obtain a permit. If work is done without a permit, this is considered a violation of RSA 482-A. Failure to respond to this Letter of Deficiency in a timely and complete manner may be construed as noncompliance by the receiving party.

DES personnel may conduct another inspection at a later date to determine whether you have come into and are maintaining full compliance with the applicable statute and rules.

Issuance of this letter shall not preclude further enforcement by DES. Failure to comply with RSA 482-A will result in enforcement by DES, including but not limited to the issuance of fines, administrative orders, or referral to the New Hampshire Office of the Attorney General for prosecution of civil or criminal penalties. If an order is issued to you, it may also be recorded with the Registry of Deeds as an encumbrance against your property.

All documents submitted in response to this Letter of Deficiency should be addressed as follows:

Stacey Herbold, Compliance Specialist
Wetlands Bureau
Department of Environmental Services
29 Hazen Drive
PO Box 95
Concord, NH 03302-0095

Should you have any questions regarding this letter, please contact Stacey Herbold at (603) 271-4062.

Sincerely,

A handwritten signature in cursive script, likely of Collis G. Adams, is written over a large, bold, black 'COPY' stamp. The signature is partially obscured by the stamp.

Collis G. Adams, CWS
Administrator
Wetlands Bureau

CERTIFIED MAIL 7002 2410 0001 6279 1475

cc: Rene Pelletier, Manager, Land Resources Management Program
Gretchen R. Hamel, Administrator, DES Legal Unit
Middleton Conservation Commission
Middleton Board of Selectmen
Eric J. Thomas, DES Subsurface Systems Bureau
Albert Souther, Attorney
David Allain, CWS
USACOE